

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RANDI A DEETS
1230 PLYMOUTH RD #2
MASON CITY IA 50401

UNITED STATES CELLULAR
CORPORATION
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-11784-AT
OC: 10/03/04 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayments

STATEMENT OF THE CASE:

United States Cellular Corporation filed a timely appeal from an unemployment insurance decision dated October 19, 2004, reference 01, which allowed benefits to Randi A. Deets. After due notice was issued, a telephone hearing was held on November 22, 2004 with Ms. Deets participating. Sales Supervisor Tammy Anderson participated for the employer.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Randi A. Deets was employed as a retail wireless consultant by United States Cellular Corporation from February 5, 2000 until she was discharged on or about October 4, 2004. On October 1, 2004 at approximately 7:00 p.m. Ms. Deets turned off the sales floor lights. Another consultant was working with a customer at that time. Ms. Deets had not noticed the customer. The lights were not to be turned off for another hour.

The incident was investigated by Sales Supervisor Tammy Anderson. Ms. Deets told Ms. Anderson that she was just "goofing off" when she turned off the lights. Ms. Deets had been placed on a performance improvement plan on September 10, 2004. The performance improvement plan was disciplinary because it provided that Ms. Deets could be discharged if she were not successful in improving her performance. Two areas of improvement were to be in teamwork and in focusing on customer needs. The employer puts great emphasis on customer service. Ms. Deets has received unemployment insurance benefits since filing a claim effective October 3, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Deets was discharged for misconduct in connection with her employment. It does.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or

incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence persuades the administrative law judge that Ms. Deets deliberately turned off the lights. Whether or not she realized that a customer was on the premises is immaterial. As she said to Ms. Anderson, she was just "goofing off." Taken alone, the incident would be nothing more than an isolated instance of poor judgment. The evidence shows, however, that Ms. Deets was already on a performance plan for insufficient customer focus and teamwork. The incident leading directly to discharge establishes a current act of both. Benefits are withheld.

Ms. Deets has received unemployment insurance benefits to which she is not entitled. They must be recovered in accordance with the provisions of Iowa Code section 96.3-7.

DECISION:

The unemployment insurance decision dated October 19, 2004, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. She has been overpaid by \$1,634.00.

kjf/tjc